

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SELIM BETOUCHE,
Petitioner,

v.

JOHN D. ASHCROFT, et al.,
Respondents.

CIVIL ACTION

NO. 04-11175-GAO

O R D E R

TAURO, D. J.

On June 2, 2004, petitioner Selim Betouche, an immigration detainee confined at the Plymouth County Correctional Facility, filed, through counsel, a petition for a writ of habeas corpus under Section 2241, naming the United States Attorney General, the Assistant Secretary of the Bureau of Immigration Customs and Enforcement ("ICE"), the Boston Field Director of "ICE", and the Sheriff of Plymouth County as respondents.

Within the petition, Betouche seeks a temporary restraining order. However, on the first page of the petition, Betouche states that he seeks an order enjoining his removal, while in the body of the petition and in the prayer for relief, Betouche seeks only an order of release from custody. Petition, p. 1, 6-13. On the same day that this petition was filed, counsel for the Department of Homeland Security orally informed a deputy clerk of this Court that Betouche is scheduled to be removed on Wednesday, June 9, 2004.

ACCORDINGLY,

(1) The Clerk of this Court shall correct the caption of this action to reflect that Joseph McDonough, Sheriff of Plymouth County, is the sole respondent to this action. Vasquez v. Reno, 233 F.3d 688, 694 (1st Cir. 2000) (a petitioner's legal custodian is the individual having day-to-day control over the facility in which petitioner is being detained), cert. denied, sub nom. Vasquez v. Ashcroft, 122 S. Ct. 43 (2001); see Mass. Gen. Laws ch. 126 § 16 (sheriff shall have custody and control of the jails in his county... .and shall be responsible for them).;

(2) The Clerk shall serve a copy of the Petition upon the respondent, Sheriff Joseph McDonough, 26 Long Pond Road, Plymouth, MA 02660; AND counsel for the Respondent: (i) the United States Attorney; AND (ii) Frank Crowley, Department of Homeland Security, Special Assistant United States Attorney, P.O. Box 8728, JFK Station, Boston, MA 02114 by certified mail AND

(3) The Clerk shall also serve a copy of the Petition and this Order upon counsel for the Department of Homeland Security by facsimile;

(4) The Respondent shall file an answer or other responsive pleading on or before June 8, 2004, AND

(5) The Respondent shall provide the Court with at least 48 hours advance notice of any scheduled deportation or removal of petitioner; and

(6) Petitioner shall file a supplement to his petition on or before Monday, June 8, 2004, clarifying whether he is seeking to enjoin his removal as well as an order of release, and on what basis removal may be enjoined. He shall also indicate why this petition is not mooted by his imminent removal.

SO ORDERED.

6/3/04
Date

s/ Joseph L. Tauro
United States District Judge

(2241servINS.wpd - 09/00)

[2241serv.]